

**REMARKS**

Claims 34-43 and 50-68 are pending and are currently under consideration.

Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim 35 is amended to further recite inserting a wire reinforcement into the porous body, where the wire remains within the porous body during expanding the porous body to the shape of the target by introducing the first fluid into the body. Claim 36 is amended to further recite removing the wire reinforcement from the porous body, after expanding the porous body to the shape of the target by introducing the first fluid into the body. Support for these amendments can be found in paragraph [0102] of the specification.

**Rejections under 35 USC § 102 - I**

Claims 34-37 and 39-43 are rejected under 35 USC § 102(e) as allegedly being anticipated by Bao et al (US Publication No. 2003/0220649). Applicant disagrees.

Regarding claim 34:

The Office Action asserts that “Bao inherently includes side(s) (i.e. one of the surfaces forming the outside of or bounding a thing) of different permeability (such as non-permeability or an opening) where the body is filled.” With respect to Bao the Office Action refers to element 36 (a chuck that holds a mandrel 32 in a balloon 34 – see Bao paragraph [0071]).

Applicant respectfully disagrees with this assertion. Claim 34 requires *expanding a porous body* to conform to a shape of a target by introducing a first fluid into an opening in the body, *where the porous body has a first side having permeability different than a remainder of the porous body*. Applicant requests clarification as to how a chuck 36 is a side of a porous body, where the porous body must conform to a shape of a target. As recited in the claims, the porous body has sides and conforms to a shape of a target. The chuck 36 of Bao is incapable of conforming to meet the requirement of this claim. The claim specifically requires that the porous body has a first side with permeability different than a remainder of the porous body. The presence of a chuck does not affect whether or not the porous body is permeable. Instead, the balloon in Bao clearly fills from the side of the chuck as the balloon

inflates to conform to the shape of the target. There is clearly no mention of the balloon 34 of Bao as having varying permeability.

The Office Action also fails to consider the claim as a whole. The claim requires expanding a porous body to conform to a shape of a target by introducing a first fluid into an opening in the body, where the porous body has a first side having permeability different than a remainder of the porous body. This varying permeability must exist when expanding the porous body to conform to a shape of a target by introducing a first fluid. The Office Action's assertion requires sealing of the balloon to allow for varying permeability. Clearly, once the Bao balloon is sealed it can no longer expand to conform to a shape of a target by introducing a first fluid.

Regarding claim 35:

Applicant amends claim 35 to recite inserting a wire reinforcement into the porous body, where the wire remains within the porous body during expanding the porous body to the shape of the target by introducing the first fluid into the body. In contrast, Bao teaches "The guide wire can be designed to substantially assume the curved contour of the *extended but unfilled balloon*, and to provide a plane of orientation, in order to both facilitate placement of the balloon and provide an outline of the periphery of the balloon in position and prior to filling. *Thereafter, the guide wire can be removed from the site prior to delivery of the biomaterial and air evacuation.*" (See Bao, paragraph [0061].)

Clearly, Bao fails to teach placement of the wire within a porous body and expanding the porous body with a first fluid while the wire remains within the body.

Regarding claim 50 and 51

Applicant notes that the Office Action appears to have switched the arguments of Bao and Porter in the appropriate sections. The Office Action states that "the porous body further comprises a second side being less permeable than the first side (depending on your point of view, the first side 36 can be more permeable in that fluid flows through 36 or another point of view is 36 is the second less permeable side through which no fluid flows out of the porous body).

Applicant notes that element 36 is a chuck that holds a mandrel 32 in a balloon 34 – see Bao paragraph [0071]. Applicant reiterates the arguments above. Namely, the claim specifically requires that the porous body has a first surface with permeability different than a

remainder of the porous body. There is clearly no mention of the balloon 34 of Bao as meeting this requirement. The Office Action is referring to a chuck.

Secondly, the Office Action fails to consider the claim as a whole. The claim requires expanding a porous body to conform to a shape of a target by introducing a first fluid into an opening in the body, where the porous body has a first side having permeability different than a remainder of the porous body. This varying permeability must exist when expanding the porous body to conform to a shape of a target by introducing a first fluid. The Office Action's assertion requires sealing of the balloon to allow for varying permeability. Clearly, once the Bao balloon is sealed it can no longer be expanded to conform to a shape of a target by introducing a first fluid.

In view of the above, applicant submits that Bao fails to anticipate claims 34-37, 39-43, and 50-51.

#### **Rejections under 35 USC § 102 - II**

Claims 34-37 and 39-43 are rejected under 35 USC § 102(a) as allegedly being anticipated by Porter et al (U.S. Patent No. US 6,547,804). Applicant disagrees.

Applicant reiterates the arguments made above regarding Bao. In this rejection, the Office Action asserts that Porter teaches "a method of providing an encapsulation device to a desired location (figs. 1a-6), the method comprising; expanding a porous body (fig. 2) to conform (to be or become similar in form or character) to a shape of a target (an aneurysm) by introducing a first fluid (saline, 30) into an opening in the body (25), where the porous body has a first side having a permeability different than a remainder of the porous body (at 14 is a side of different permeability)."

Applicant notes that element 14 of Porter is a detachment mechanism. As stated above, claim 34 requires *expanding a porous body* to conform to a shape of a target by introducing a first fluid into an opening in the body, *where the porous body has a first side having permeability different than a remainder of the porous body*. Applicant requests clarification as to how a detachment mechanism is a side of a porous body, where the porous body must conform to a shape of a target. The detachment mechanism 14 of Porter is incapable of conforming to meet the requirement of this claim.

The claim specifically requires that the porous body has a first side with permeability different than a remainder of the porous body. The presence of a detachment assembly does not affect whether or not Porter balloon is permeable. There is clearly no mention of the Porter balloon as having varying permeability.

Furthermore, the Office Action fails to consider the claim as a whole. The claim requires expanding a porous body to conform to a shape of a target by introducing a first fluid into an opening in the body, where the porous body has a first side having permeability different than a remainder of the porous body. This varying permeability must exist when expanding the porous body to conform to a shape of a target by introducing a first fluid. The Office Action's assertion requires sealing of the Porter balloon to allow for varying permeability. Clearly, once the Porter balloon is sealed it can no longer expand to conform to a shape of a target by introducing a first fluid.

Regarding claims 35-37, Porter explicitly states that “[t]he stiffening member 18 provides compressive stiffening support to allow delivery of the balloon to the aneurysm along the guide wire in a stretched/fully extended state. *Upon retraction of the guide wire, the check valves 17, 19 operate to selectively close the balloon openings, allowing it to be filled by inflation fluid and, subsequently solidifying fluid.*” (Porter Col. 3, line 59-66.) Clearly, Porter does not teach inserting a wire reinforcement into the porous body where the wire remains within the porous body during expanding the porous body to the shape of the target by introducing the first fluid into the body.

As noted above, Porter fails to teach a balloon having a porous body with varying permeability. Applicant submits that an detachment mechanism does not affect the permeability of the side of the balloon while it expands to conform to a shape of a target.

In view of the above, applicant believes that Porter fails to anticipate claims 34-37, 39-43, and 50-51.

### **Rejections under 35 USC § 103**

Claim 38 is rejected under 35 USC § 103(a) as allegedly being unpatentable over Bao et al. and Porter et al. Applicant disagrees.

In view of the amendment to claim 34 as noted above, applicant believes this rejection should be withdrawn. Neither Bao nor Porter teach or suggest all of the requirements of the base claim from which claim 38 depends.

### **Rejections under 35 USC § 103**

Claims 52-58 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Porter et al. in view of Soltesz et al. (US 6,527,761). Applicant disagrees.

As noted above, Porter explicitly states that “[t]he stiffening member 18 provides compressive stiffening support to allow delivery of the balloon to the aneurysm along the guide wire in a stretched/fully extended state. *Upon retraction of the guide wire, the check valves 17, 19 operate to selectively close the balloon openings, allowing it to be filled by inflation fluid and, subsequently solidifying fluid.*” (Porter Col. 3, line.)

Applicant submits that any suggestion or motivation to secure a wire reinforcement to an interior surface of the Porter balloon is contrary to the explicit teachings of Porter. In view of the above, applicant believes that the Office Action fails to establish a proper *prima facie* case of obviousness. The Office Action provides no support as to why one would contradict the teachings of Porter to arrive at the suggested combination. Any such motivation appears to be based in impermissible hindsight given applicant's own disclosure.

In view of the above, applicant believes that this rejection should be withdrawn.

### **Rejections under 35 USC § 103**

Claims 34-51, 59-61, and 63-68 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Chobotov (US 6,359,019) in view of Porter et al.

The Office Action conceded that Chobotov does not disclose the body s porous does not discloses the body as porous and introducing a second fluid into the porous body to displace the first fluid through the at least the first side of the porous body differently than the second side of the porous body; and allowing the second fluid to cure to secure the porous body to the target.

As noted above, Porter fails to teach or suggest all of the requirements of claims 34-51. With regards to claims 59-61, Porter fails to teach introducing a second fluid into the

porous body to displace the first fluid through at least a first side of the porous body differently than a second side of the porous body.

In view of the arguments presented above, applicant submits that the addition of Porter fails to overcome the deficiencies of Chobotov. For this reason alone, applicant respectfully requests withdrawal of this rejection.

**Rejections under 35 USC § 103**

Claims 60-62 are rejected under 35 USC § 103(a) as allegedly being unpatentable over Chobotov (US 6,359,019) in view of Porter et al. and further in view of Aboul-Hosn (U.S. 6,976,996). Applicant disagrees.

As discussed immediately above, the combination of Chobotov (US 6,359,019) in view of Porter et al. fails to anticipate claim 59, from which claims 60-62 ultimately depend. The addition of Aboul-Hosn does nothing to remedy this defect.

As a result, applicant believes this rejection should be withdrawn.

### CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. TSNMNE00100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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